

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9851 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATEL RAJENDRAKUMAR BHIKHABHAI

Versus

DIST PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 9851 of 1993
MR ANANT S DAVE for Petitioner No. 1
MS MITA PANCHAL, LD.AGP for Respondent No. 1,3
MR RA MISHRA for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/01/2004

ORAL JUDGEMENT

1. Patel Rajendrakumar Bhikhabhai, petitioner has
filed this petition with a prayer that this Court may

issue a writ of mandamus or any other writ, direction or order for quashing and setting aside the order passed by the Director of Primary Education dated 16th September, 1993. In the impugned order, the authority has transferred the petitioner as a primary teacher to Ratanpur, Taluka Prantij School. The petitioner further prayed that the consequent order passed by the Director Primary Education Officer may also be declared illegal, ultra vires and bad in law. However, the said order has not been put on record of the petition. The petition has been filed on 23rd September, 1993. This Court by interim order dated 24th September, 1993, and 7th October, 1993, has protected the petitioner.

2. Today the matter was placed for hearing before this Court. Mr. Anant Dave, learned advocate appears on behalf of the petitioner. He stated the brief facts of the case are as under:

2.1 Patel Rajendrakumar Bhikhabhai - petitioner joined the service as a primary teacher under Director of Primary Education, Sachivalaya, Gandhinagar as well as District Primary Education Officer at Himmatnagar in the month of April, 1992. He was first appointed as a primary teacher at Village Kidi, Taluka Modasa. Thereafter the authority transferred the petitioner on 17th July, 1993, from village Kidi, Taluka Modasa to village Ratanpur, Taluka Prantij. The said order has been produced at Annexure "A" to the petition on page 23. Thereafter only after 20 days again the Director of Primary Education by order date 12.8.93 cancelled the earlier order of transfer dated 17th July, 1993, and again he was transferred to village Kidi, Taluka Modasa.

2.2 Being aggrieved and dissatisfied with the said order, the petitioner filed Special Civil Application No.8168 of 1993 before this Court.

2.3 When the matter was placed for hearing before this Court, my learned Brother R.K. Abichandani, J. by order dated 19.8.93 observed that as the petitioner desires to make a representation before the Director of Primary Education, Gujarat State, Gandhinagar against the order of cancellation of transfer. In view of the same, he is entitled to make representation and the authority will consider the same sympathetically and render his decision on such representation within four weeks thereafter. The said order has been produced at Annexure "C" on page 27 of the petition.

2.4 Thereafter the petitioner has made detailed

representation to the Director of Primary Education on 30th August, 1993, which is produced at Annexure "D" on page 28 of the petition.

2.5 Thereafter the District Primary Education Officer by his order dated 16th September, 1993, pleased to transfer the petitioner to Pratinj School which is produced at Annexure "E" on page 32 of the petition.

2.6 Being aggrieved and dissatisfied with the said order, the petitioner filed this petition before this Court as indicated above on several grounds on 23rd September, 1993.

3. When the matter was placed for hearing before this Court, on 24th September, 1993, the Court issued notice and granted stay. Thereafter on 7th October, 1993, this Court pleased to pass the following order:

"Mr.S.M.Baria, District Primary Education Officer, District Education Committee, Sabarkantha District, Himmatnagar is present in person. Mr.L.R.Pujari, ld. A.G.P. for the Director of Primary Education, Gujarat State wants time to file affidavit in reply. The presence and appearance of respondent No.1, S.M.Baria is recorded in this matter and other matters of this group which are on board today. In all these matters belonging to this group, the ad-interim orders are extended till further orders. All these matters are adjourned to 25th October, 1993. Mr.S.M.Baria, respondent No.1 agrees to comply and undertakes to communicate to the concerned principals about continuance of ad-interim orders till further order. S.O. to 25th October, 1993."

4. In view of the aforesaid order, the petitioner has still remained at the place where he was to place. Thereafter the matter was admitted on 17th August, 1994, and the interim relief was continued. Now the matter was placed for hearing before this Court.

5. Learned advocate for the petitioner has stated that in view of the interim order of this Court the petitioner has remained as a teacher on the said post for all these years. In view of the same, at present he do want to contest the petition at this stage. However, if the petitioner is allowed to make the representation before the authority, and the authority after hearing him and consider the representation kindly and

sympathetically that will be the ends of justice.

6. In the facts and circumstances of the case, without deciding the merits of the matter, it is directed that petitioner will make representation within three weeks from today, and after said representation is made, the authority will consider the same within six weeks from the date of making of such representation after hearing the petitioner and pass a short but speaking order in this behalf. However, the said order will not be implemented for two weeks from the receipt of the order received by the petitioner.

7. In view of the aforesaid observations and directions, this petition is disposed of with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

syed/